1887.

SUPREME COURT OF THE UNITED STATES.

No. 150.

EDWARD HERNDON, APPELLANT,

vs.

JAMES C. RIDGWAY, EDWARD T. RIDGWAY, WILLIAM H. GASQUE, AND HENRY DAVIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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GIBSON, Print.

Exemplification.

EDWARD HERNDON
vs.
HENRY DAVIS et al.

Pleas had at *at* a district court of the United States, for the northern district of Mississippi, in chancery sitting, begun and held at the town of Pontotoc, in and for said district, on the first Monday in December, 1852, present the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that on the 8th day of June, 1852, *that* Edward Herndon filed his certain bill for injunction, in the words and figures following, to wit:

Original bill.

To the honorable the judges of the circuit court of the United States, for the ninth circuit, and State of Mississippi.

Humbly complaining, showeth unto your honors, your orator, Edward Herndon, a citizen of Monroe county, State of Mississippi, that on or about the 29th day of October, 1849, he purchased of one James C. Ridgway, a citizen of the State of Alabama, certain negro slaves, to wit: Archey, Maria, Moses, Edenboro', Phillis, Julia, Ann, Melitha, and Sylvia, for which he executed to the said Ridgway his writing obligatory, for about the sum of twenty-six hundred dollars, dated about the 29th of October, 1849, due on or about 1st March, 1850, and received from the said Ridgway his bill of sale with a warranty. Upon this obligation, at the time of its execution, he paid the said Ridgway the sum of one hundred and twenty-five dollars.

Your further charges, that on or about the 21st day of February, 1850, he sold the said slaves to one William P. Givan, to whom he delivered them, together with a bill of sale with warranty.

Your orator further charges, that since said purchase and resale as aforesaid, one Henry Davis, a citizen of the State of Alabama, has come forward, claimed said slaves, and instituted a suit against said Givan in the circuit court of Pontotoc, which was removed to the circuit court of Monroe county, in Mississippi, when the said Davis suffered a nonsuit.

Your orator further charges, that the said Davis now threatens to institute an action against your orator to recover the value of said slaves, or to renew his action against the said Givan, your orator's vendee.

Your orator charges, that one Eri T. Ridgway, as the endorser of the said James C. Bridgway, for the use of one William H. Gasque, has now commenced an action on the law side of your honors' court, upon the obligation so executed by him for the said slaves as aforesaid,

and is prosecuting the same to judgment. The said Eri T. Bridgway and William H. Gasque are both citizens of the State of Alabama.

Your orator showeth that, as he is informed and believes, the said James C. Ridgway, his vendor, claims title to the said slaves by purchase from one George R. G. Morgan, the son-in-law of said Davis, who claims them under a gift to his wife, made to her by her father, the said Davis.

The said Davis, as your orator is informed and believes, claims said slaves as his own property, in denial and contradiction of any title dederived by the said Morgan from any gift made by him to his said daughter.

Your orator showeth to your honors, that amid this claim and conflict of title between his vendor, the said Ridgway, whom your orator charges is insolvent, and the said Davis, in which he has no interest, and over which he has no control, great wrong, vexation, and injustice may be done him, without the interposition of your honors. Should the said Eri T. Ridgway, for the use of the said Gasque, obtain judgment against your orator upon his obligation given for the said slaves, he may afterwards lose the whole consideration for the same by an action instituted against him by the said Davis, to recover the value of said slaves, or by an action and recovery against the said Givan, his vendee, to whom in that event he would be liable.

All of which would be most inequitable and unjust to your orator; to prevent which, and as he avers, without collusion with and without the request of any or either of the said parties, and without having received any indemnity from any or either of said parties, against the dangers and losses which threaten him, he hereby files his bill of peace in the nature of a bill of interpleader against the said parties, with the sole view of guarding his own interests, avoiding circuity of actions, vexations, law suits, and protracted litigation. And to the end that this may be accomplished, so far as he is able to effect it, he hereby offers to bring into court the amount due the said Ridgway upon his said obligation as aforesaid, or to pay the ascertained value of said slaves to the said Davis, as your honors shall direct and decree.

To the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief herein prayed, and may upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, full and perfect answers make to such of the several interrogatories hereinafter numbered, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether he did not purchase of the said James C. Ridgway the slaves herein mentioned, at the time and under the circumstances set forth, and receive from him a warranty bill of sale for the same? And is he not insolvent?

2. Whether he did not pay to the said Ridgway, at the time of said purchase, the sum of $125?

3. Whether your orator has not, since said purchase, resold said slaves to one Wm. P. Givan, and given him his warranty bill of sale?

4. Whether the said defendant, Henry Davis, does not claim said slaves as his own property; whether he did not institute a suit against said Givhan for them, as set forth in this bill; and whether he has not threatened to institute another suit against your orator, or Givan, his vendee, to recover the same, or their value?

5. Whether the said Eri P. Ridgway, as endorsee of James C. Ridgway, for the use of Wm. H. Gasque, has not instituted a suit against your orator, in your honors' court, at Pontotoc, in Mississippi, for the recovery of the amount due by your orator in his obligation to said James C. Ridgway?

The defendants required to answer the whole of the interrogatories above set forth, from 1 to 5 inclusive.

Your orator prays your honors, that the said defendants decreed to interplead together touching the right and title to the property in controversy, and that it be ascertained by your honors to whom your orator is indebted, together with such other relief as your honors may think proper.

Your orator further prays your honors to grant him a writ of injunction, directed to the said James C. Ridgway, Eri T. Ridgway, and Wm. H. Gasque, or to Goodwin & Sale, their attorneys of record, enjoining and restraining them from the further prosecution of their said suit in your honors' court, at Pontotoc, instituted in favor of Eri P. Ridgway, as endorsee of the said James C. Ridgway, for the use of Wm. H. Gasque, against your orator, upon the writing obligatory, for the sum of twenty-six hundred dollars, executed 29th October, 1849, due 1st March, 1850, to James C. Ridgway, and by him endorsed to said Eri P. on the 25th day of February, 1850.

Your orator also prays your honors to grant him a writ of injunction, directed to the said Henry Davis, or to Messrs. "Dowd and Murphy," his attorney of record, enjoining and restraining them from the commencement or prosecution of any suit or action either against your orator, or Wm. P. Givan, his vendee, to recover either said slaves or their value, so purchased from the said Ridgway as aforesaid, until the matters herein set forth can be heard and determined by your honors.

Your orators pray your honors for the writ of subpœna, directed to the said James C. Ridgway, Eri P. Ridgway, William H. Gasque, and Henry Davis, commanding them to appear at the next term of your honors' court, to be held at Pontotoc, in Mississippi, on the day of 1852, then and there to answer, as above prayed, the matters and things herein set forth, and to stand by and abide such order or decree as your honors may make in the premises; and as in duty bound, &c.

JAMES PHELIN,
Sol. for comp't.

Affidavit to bill.

THE STATE OF MISSISSIPPI,
Monroe county.

Personally appeared before me, Samuel J. Gholson, judge of the United States district court for the State of Mississippi, Edward Herndon, who made oath that the facts stated in the foregoing bill, which are within his own knowledge, are true as stated, and those stated on the information of others he verily believes to be true.

EDWARD HERNDON.

Sworn to and subscribed, before me, June 5th, 1852.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Fiat of judge.

To the clerk of the district court of the United States, for the ninth circuit and northern district of Mississippi:

Let injunction and subpœna issue as prayed for, upon complainant submitting to a judgment in the case described in the foregoing bill, and entering into bond, with security to be approved by you, in the sum of eight thousand dollars, conditioned according to law, payable to Henry Davis; and a bond, payable to Wm. H. Gasque, in the penalty of five thousand dollars, conditioned according to law.

Given under my hand this the 5th day of June, A. D. 1852.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Notice of application for injunction to Wm. H. Gasque.

Notice by complainant to Messrs. Goodwin & Sale of application for injunction, as follows, to wit:

TO ERI T. RIDGWAY and WM. H. GASQUE, or Messrs. GOODWIN and SALE, their attorneys.

GENTLEMEN: You will take notice, that I shall apply to his honor, S. J. Gholson, at the office of Dowd and Murphy, this day at 12 o'clock, a. m., for an injunction restraining you from the further prosecution of a suit now instituted by you in the federal court for the northern district of Mississippi, by Eri T. Ridgway, for the use of Wm. H. Gasque, against Edward Herndon, when and where you can be and appear if you shall deem proper.

EDW. HERNDON,
By his attorney,
JAS. PHELAN.

We acknowledge the service of this notice, 5th June, 1852.

GOODWIN & SALE.

Notice to Henry Davis of application for injunction.

Notice to Henry Davis and his attorneys of application for injunction, as follows, to wit:

To Mr. HENRY DAVIS or Messrs. DOWD & MURPHY, his attorneys.

GENTLEMEN: You will please take notice that I shall apply to the Hon. Sam J. Gholson, at the office of Dowd & Murphy, this day at 12 o'clock a. m., for an injunction restraining you from the institution of any suit or suits against me or against Wm. P. Givan, my vendee, either for the recovery of the value of certain slaves purchased by me from one James C Ridgway, or against said Givan, for said slaves or their value, when and where you can appear.

EDW. HERNDON,
By att'y, JAS. PHELAN.

We accept service of this notice, June 5th, 1852.

DOWD & MURPHY.

Injunction bond, executed to Henry Davis.

Bond for injunction to Henry Davis, executed in the words and figures following, to wit:

THE STATE OF MISSISSIPPI.

Know all men by these presents, that we, Edward Herndon, Austin Pollard, *an* John L. Tindall, jr., are held and firmly bound unto Henry Davis, of the State of Alabama, in the penal sum of eight thousand dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators forever.

There is a condition to the above obligation, which is this: The said Herndon purchased of one James C. Ridgway certain negro slaves, for which he executed to him his obligation for the sum of twenty-six hundred dollars. This obligation was afterwards endorsed to Eri T. Ridgway, who has instituted suit upon the same for the use of Wm. H. Gasque, in the federal court for the northern district of Mississippi. The said slaves the said Herndon resold to one Wm. P. Givan. The said Henry Davis now claims the said slaves so purchased by Herndon of the said Ridgway as of his own property, in denial of the title of the said Ridgway, and threatened to institute suit for the same. To settle the conflicting titles to said slaves, and to save himself harmless in the payment of his indebtedness for the same, the said Herndon has filed his bill of peace and interpleader in the federal court for the northern district of Mississippi, praying that the said parties may interplend together, touching their respective titles to said slaves, and his liability for the same be determined and decreed. He has also obtained an injunction restraining the said Henry Davis from commencing or prosecuting any suit for the said slaves or their value, either against the said Herndon or the said Givan, his vendee. Now,

if the said Herndon shall abide by and perform whatever order or decree may be made in said case in favor of the said Davis, and pay him all such costs and damages as may be occasioned him by the wrongful sueing out of said injunction, then this obligation is to be void, otherwise to remain in full effect.

Given under our hands and seals, this 12th day of June, A. D. 1852.

EDWARD HERNDON, [SEAL.]
A. POLLARD, [SEAL.]
JNO. L. TINDALL, [SEAL.]

Witness—
T. W. WILLIAMS.

I approve of the foregoing bond and securities.
Given under my hand, this the 12th day of June, A. D. 1852.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Injunction bond, executed to Wm. H. Gasgue.

Bond for injunction, executed to Wm. H. Gasque, in the words and figures following, to wit:

THE STATE OF MISSISSIPPI.

Know all men by these presents, that we, Edward Herndon, Austin Pollard, and John L. Tindall, jr., are held and firmly bound unto Wm. H. Gasque, of the State of Alabama, in the penal sum of five thousand dollars, for the payment of which truly to be made, we hereby bind ourselves, our heirs, executors, and administrators.

There is a condition to the above obligation, which is this: The said Herndon, above bound, purchased of one James C. Ridgway certain slaves, for which he executed to him his writing obligatory for the sum of twenty-six hundred dollars. This obligation was afterwards endorsed by the said James C. to Eri T. Ridgway, who has sued the said Herndon upon the same, for the use of the said William H. Gasque, in the federal court for the northern district of Mississippi. Since said purchase, one Henry Davis has presented himself, claims the said slaves as his own property in denial of the title of the said Ridgway, and threatens to institute suit against the said Herndon to recover the same or their value. To settle the conflicting titles of said slaves, and to save himself harmless in the payment of his indebtedness for the same, the said Herndon has filed his bill of peace and interpleader in the federal court for the northern district of Mississippi, praying that the said parties may interplead together touching their respective titles to the said slaves, and that his liability for the same may be decided and decreed upon, submitting to a judgment upon his said obligation in the suit instituted as aforesaid in favor of the said Gasque, which he has done. The said Herndon has also obtained an injunction enjoining and restraining any further proceedings upon the same on behalf of the said Gasque until the matters of the said bill shall be finally heard and decreed. Now,

if the said Herndon shall pay all money and costs due or to become due upon said judgment, and all such costs and damages as shall be awarded against him upon the dissolution of said injunction, should said injunction be dissolved in his favor, then this obligation is to be void, otherwise to remain in full force.

Given under our hands and seals, this 12th day of June, 1852.

EDWARD HERNDON, [SEAL.]
A. POLLARD, [SEAL.]
JNO. L. TINDALL, [SEAL.]

Witness—
T. W. WILLIAMS.

I approve of the foregoing bond and securities. Given under my hand this the 12th day of June, A. D. 1852.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

The writ of injunction issued as prayed for, directed to Henry Davis and his attorneys, is in the words and figures following, to wit:

Writ of injunction to Henry Davis.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss.

The President of the United States, to Henry Davis and Messrs. Dowd and Murphy, his counsellors and attorneys, greeting:

Whereas it has been represented to us, in our district court for the northern district of Mississippi, in chancery, sitting on the part of Edward Herndon, complainant, that he has lately exhibited his bill of complaint against you, Henry Davis, defendant, to be relieved touching the matters in said bill contained; we therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin and command you, the said Henry Davis and Messrs. Dowd and Murphy, under the penalty of eight thousand dollars, to be levied of your goods and chattels, lands and tenements to our use, that you absolutely refrain from the commencement or prosecution of any suit or action either against complainant or one William P. Givan, his vendee, to recover certain negro slaves or the value thereof, mentioned in complainant's bill, and from any further proceedings against the said complainant touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1852, and 76th year of the independence of the United States.

Issued the 30th day of June, 1852.

R. W. EDMONDSON, *Clerk.*

Upon which the marshal made the following return, to wit:

Marshal's return.

Received 6th July, 1852, and executed on the 9th by copy.
WM. McQUISTON, *Marshal,*
By E. B. McGUIRE, *Deputy M.*

Writ of injunction to Jas. C. Ridgway, E. P. Ridgway, and Wm. H. Gasque.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss.

The President of the United States, to James C. Ridgway, Eri P. Ridgway, and W. H. Gasque, or Messrs. Goodwin & Sale, their counsellors and attorneys, greeting:

Whereas it hath been represented to us, in our district court for the northern district of Mississippi, in chancery sitting, on the part of Edward Herndon, complainant, that he has lately exhibited his bill of complaint against you, James C. Ridgway, Eri P. Ridgway, and Wm. H. Gasque, defendants, to be relieved touching the matters in said bill contained; we therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said James C. Ridgway, Eri P. Ridgway, and William H. Gasque, and Messrs. Goodwin & Sale, under the penalty of five thousand dollars, to be levied of your goods and chattels, lands and tenements to our use, that you absolutely refrain from proceeding further upon the said judgment in complainant's bill mentioned in favor of Eri P. Ridgway, for the use of said Wm. H. Gasque, against complainant, and from any further proceedings against the said complainant touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1852, and the 76th year of the independence of the United States.

Issued the 30th day of June, 1852.

R. W. EDMONDSON, *Clerk.*

Upon which the marshal made the following return, to wit:

Marshal's return.

Received 6th July, 1852, and executed on Goodwin & Sale, their attorneys, by copy, 24th July.
WM. McQUISTON, *Marshal, nor. dist.*
By ED. B. McGUIRE, *Deputy marshal.*

The writ of subpœna issued as prayed for, directed to Henry Davis and his attorneys, in the words and figures following, to wit:

1385.

Writ of subpœna to Henry Davis.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss.

The President of the United States, to Henry Davis, or Messrs. Dowd & Murphy, his attorneys of record, greeting:

For certain causes offered before us in our district court for the northern district of Mississippi, sitting in chancery, we command you that, laying all other matters aside, and notwithstanding any excuse, you personally appear at our district court, in and for said district, sitting in chancery, to be at the town of Pontotoc, on the first Monday of August next, to answer to a bill of complaint exhibited against you by Edward Herndon, *complaint*, in our said court, and further to do and to receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1852, and 76th year of the independence of the United States.

Issued the 30th day of June, 1852.

R. W. EDMONDSON, *Clerk.*

To the marshal of the northern district of Mississippi, to execute and return.

R. W. EDMONDSON, *Clerk.*

Memorandum for defendant.—Mem. for def't.

The defendant is required to enter his appearance in this cause in the office of the clerk of said court, on or before the first Monday of August next, or complainant's bill may be taken for confessed, and proceeded in ex parte.

R. W. EDMONDSON, *Clerk.*

Marshal's return.

Upon which the marshal made the following return, to wit:

Rec'd 6th July, 1852, and executed 9th, by copy, on Dowd & Murphy, att'ys, &c.

WM. McQUISTON, *Marshal,*
By ED. B. McGUIRE, *Dept. M.*

Writ of subpœna to Wm. H. Gasque, Jas. C. Ridgway, and Eri P. Ridgway.

The writ of subpœna issued as prayed for, directed to Wm. H. Gasque, or his attorneys, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss.

The President of the United States, to William H. Gasque, James C. Ridgway, and Eri P. Ridgway, or Messrs. Goodwin & Sale, their attorneys of record, greeting:

For certain causes offered before us in our district court, for the northern district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our district court, in and for said district, sitting in chancery, to be held at the town of Pontotoc, on the 1st Monday of September next, to answer to a bill of complaint exhibited against you by Edward Herndon, *complaint*, in our said court; and further to do and receive what our said court shall consider in this behalf. Herein fail not, as you will answer the contrary at your peril.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1852, and 76th year of the independence of the United States.

Issued the 30th day of June, 1852.

R. W. EDMONDSON, *Clerk.*

To the marshal of the northern district of Mississippi, to execute and return.

R. W. EDMONDSON, *Clerk.*

Memorandum for defendants.—Mem. for def't.

The defendants are required to enter their appearance in this cause, in the office of the clerk of said court, on or before the first Monday of September next, or complainant's bill may be taken for confessed, and proceeded in ex parte.

R. W. EDMONDSON, *Clerk.*

Marshal's return.

Upon which the marshal made the following return, to wit: "Rec'd 6th July, 1852, and executed on Goodwin & Sale, their attorneys, 24th July, 1852.

WM. McQUISTON, *Marshal no. dist.*
By ED. B. McGUIRE, *Dep'ty marshal.*

Motion to dismiss bill.

A motion was entered to dismiss complainant's bill, in the words and figures following, to wit:

EDW'D HERNDON
vs.
JAMES C. RIDGWAY, Eri T. Ridgway, Wm. H. Gasque, and Henry Davis, or Dowd & Murphy, his attorneys.

Motion to dismiss this cause for want of *injunction*—

1st. Because the courts of the United States have no power to enjoin proceedings in a State court.

2. Because Henry Davis is not a citizen of the northern district of Mississippi, and Dowd and Murphy are not his attorneys of record in any of the courts of the United States, and have not instituted proceedings or suit therein against said Herndon, but are attorneys of record of said Davis, in the circuit court of Monroe county, Mississippi, a State court, as per affidavit on file.

3. Because the bill filed does not show affirmatively that this court has any jurisdiction of the subject-matter or the parties.

DOWD & MURPHY, *for motion.*
GOODWIN & SALE, *for motion.*

An affidavit to sustain the motion to dismiss bill was made in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi.

District court at Pontotoc, December term, 1852.

EDWARD HERNDON
vs.
JAMES T. RIDGWAY et al.

Affidavit, with motion to dismiss bill.

In open court personally appeared Wm. F. Dowd, one of the firm of Dowd & Murphy, who made oath that Dowd & Murphy are not the attorneys of record of Henry Davis, and have not been as such to institute any suit in this court, or any one of the federal courts of the United States, against Edward Herndon, for the recovery of the property mentioned in the bill filed in this cause, but they, said Dowd & Murphy, are the attorneys of record of Henry Davis to prosecute a suit against said Herndon, in a State court, to wit, the circuit court of Monroe county, in the State of Mississippi.

W. F. DOWD.

Sworn to before me, this 10th December, 1852.
R. W. EDMONDSON, *Clerk.*

The demurrer of Wm. H. Gasque to complainant's bill is in the words and figures following, to wit:

Demurrer of Wm. H. Gasque to complainant's bill.

THE UNITED STATES OF AMERICA.

In the district court of the United States, for the northern district of Mississippi.—At the December term, 1852.

EDWARD HERNDON, complainant,
vs.
JAMES C. RIDGWAY, Eri T. Ridgway, Wm. H. Gasque, and Henry Davis, defendants

And the said defendant, Wm. H. Gasque, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill and the relief therein prayed; and for causes of demurrer state and show the following:

1. That the said complainant has not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant, touching the matters contained in the said bill.

2. That it appears, in and by the said bill, that this court has no jurisdiction to compel the parties defendants to interplead with each other in regard to the title of said slaves, nor to ground any decree in favor of the plaintiff, or give the said complainant any relief against this defendant.

3. That it appears, in and by the said bill, that the defendant Davis and those claiming under Morgan claim title to the slaves in the bill mentioned by adverse independent legal titles, and not in privity with said complainant, and in regard to which this defendant sets up no claim or title.

4. That it is not stated and shown in said bill that each of the defendants has such a claim or right to the negroes in the bill mentioned as that he, said plaintiff, might be sued thereon, but only Davis and Givan; and because it is expressly shown that neither the said James C. Ridgway, Eri T. Ridgway, nor this defendant can institute any suit or action against complainants for said negroes, nor that they are claiming the same.

5. That it appears, in and by the said bill, that the complainant has a plain, adequate, and unembarrassed defence and protection at law.

6. That it appears, in and by the said bill, that the said complainant is a wrong-doer in respect to the defendant Davis.

7. That it appears, in and by the said bill, that the said complainant has sold and delivered the possession of said negroes to one Wm. P. Givan, who is not a party to the bill, and who is not asserting any claim against complainant on account of said purchase.

8. That said bill upon its face purports to be a bill of peace in the nature of a bill of interpleader; and yet no claim or right is asserted to the negroes or money in the bill mentioned, nor any prayer that such right may be established or perpetuated.

10. That it appears, in and by the said bill, that no relief is prayed against any of the parties, except that the defendants may be respectively enjoined from their suits against complainants, and that they be required to interplead, and subpœnaed to answer said bill, and to abide by such decree as the court may make, which is wholly insufficient and improper; and said complaint does not offer to bring up and deliver to the receiver of the court the negroes claimed by defendant Davis.

11. That it appears, in and by the said bill, that Wm. P. Givan, the complainant's vendee of the negroes in the bill mentioned, is a necessary party to said bill, he having the possession of said slaves.

12. That said bill is exhibited against this defendant, and three other persons as defendants thereto, for several and distinct and independent causes of action, which have no relation to or privity with each other or the parties thereto, and in part of which this defendant is in no way interested or concerned, and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

GOODWIN & SALE,
Solicitors for defendant Gasque.

Affidavit to sustain demurrer.

In the district court of the United States, for the northern district of Mississippi.—December term, 1852.

Personally appeared before me, Robert W. Edmondson, clerk of said court, John B. Sale, attorney for defendant Gasque, and who, being first duly sworn, states that the within demurrer is not interposed for delay.

JNO. B. SALE,
One of counsel for defendant Gasque.

Sworn to before me, this 6th day of December, 1852.
R. W. EDMONDSON, *Clerk.*

Certificate of counsel.

THE STATE OF MISSISSIPPI.

We hereby certify that the within demurrer, in our opinion, is well founded in point of law.

6th December, 1852. GOODWIN & SALE,
Solicitors for defendant Gasque.

Order to set demurrer for hearing, in the words and figures following, to wit:

Order to set demurrer for hearing.

EDWARD HERNDON
vs.
WM. H. GASQUE et al.

The clerk will set this case down for hearing on the demurrer of defendant Gasque to the complainant's bill.

December 9, '52.

GOODWIN & SALE, *for Gasque.*

Agreement between counsel.

An agreement entered into between counsel, and filed in the words and figures following, to wit:

EDWARD HERNDON
vs.
WM. H. GASQUE et al. } Bill of interpleader.

District court, northern district Mississippi, at Pontotoc, December term, 1852.

In the above case it is agreed by counsel for plaintiff and defendants, for benefit of plaintiff's counsel, that defendants' motion to dismiss for want of jurisdiction, and Gasque's demurrer to the bill, be submitted now for hearing, and be argued at Aberdeen at such earliest day as the judge will hear the same, and his decision thereon be rendered and entered on the minutes as of the present term, for which purpose a blank shall be left on the minutes. Each party to have the right of appeal by consent, to be exercised precisely as if taken at this term; and it is also agreed by plaintiff's counsel, that no delay shall be caused by this agreement any more than if regularly argued and appealed from at this term of the court.

JAMES PHELAN, *Sol'r for complainant.*
Per C. B. BALDWIN.
GOODWIN & SALE, *for Gasque.*

December 10th, 1852.

Affidavit of James A. Phelan, counsel for complainant.

An affidavit made by complainant's counsel, and filed in the words and figures following, to wit:

United States district court, for the northern district of Mississippi.

Personally appeared in open court James Phelan, counsel for the plaintiff in the case of Edward Herndon against W. H. Gasque et al., who says on oath that he is surprised by the affidavit filed by Messrs. Dowd & Murphy, upon whom subpœna was served as attorneys of Henry Davis, denying that they are his attorneys, and refusing to acknowledge such service by an appearance to the action; that he was fully of the opinion, from the conduct and conversations of the said

firm, that they acknowledged themselves as attorneys of said Davis, and had entered their appearance as such. He knew nothing to the contrary until the case was called.

JAMES PHELAN.

Sworn to and subscribed before me,

S. J. GHOLSON,
Judge U. S. district court for Miss.

Order of court continuing motion to dismiss bill.

On the 13th day of December, 1852, the following proceedings were had in this cause, to wit:

EDWARD HERNDON
vs.
HENRY DAVIS et al.

MONDAY, 13*th December*, 1852.

This day came on to be heard the motion made by defendants in this cause to dismiss complainant's bill for want of jurisdiction, and the court not being fully advised as to a proper decree upon said motion, it is ordered, adjudged and decreed that said motion be continued until the next term of this court, and that the complainant have an alias subpœna for defendant, Davis.

Order of court dissolving injunction.

And afterwards, to wit, on the 7th day of June, 1853, it being a day of the term of said court, the following proceedings were had, to wit:

EDWARD HERNDON
vs.
HENRY DAVIS et al.

TUESDAY, *June* 7, 1853.

This day again came on to be heard the motion made and submitted at a former term of this court to dismiss complainant's bill for want of jurisdiction; and the court being now fully advised, after argument of counsel, it is ordered, adjudged and decreed that said motion be sustained; that complainant's bill be dismissed; that the injunction heretofore granted in this cause be dissolved, and that defendants recover of complainant their cost in this behalf expended.

Order of court granting appeal.

And afterwards, to wit, at a subsequent day of the same term of said court, the following proceedings were had, to wit:

EDWARD HERNDON
vs.
HENRY DAVIS et al.

WEDNESDAY, *June* 9, 1853.

The complainant in this cause prayed an appeal to the Supreme Court of the United States, which is allowed by this court.

Appeal bond executed by complainant.

The appeal bond executed by Edward Herndon, the complainant in this cause, is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA.

In the district court of the United , for the northern district of Mississippi.

EDWARD HERNDON
vs.
HENRY DAVIS, Eri T. Ridgway, Wm. H. Gasque and James C. Ridgway.

Know all men by these presents, that we, Edward Herndon and John L. Tindall, jr., of said district, are held and firmly bound unto the above named Henry Davis and William H. Gasque, in the sum of five thousand six hundred and twenty dollars, to be paid to the said Henry Davis and William H. Gasque, their heirs, executors, or administrators, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each of us, jointly, severally and firmly by these presents. Sealed with our seals, and dated this 13th day of June, 1853.

Whereas the above named Edward Herndon hath prayed and obtained an appeal to the Supreme Court of the United States, to be holden at Washington, on the 1st Monday of Dec'r next, from a final decree in the above entitled suit by the district court of the United States, for the northern district of Mississippi, at the June term thereof, 1853:

Now, therefore, the condition of the above obligation is such, that if the above named Edward Herndon shall prosecute his said appeal with effect, and all damages and costs if he shall fail to make his plea good, then this obligation to be void, otherwise to remain in full force and virtue.

EDWARD HERNDON, [SEAL.]
JNO. L. TINDALL, [SEAL.]

I approve of the within and foregoing bond and security.
Given under my hand this the 14th day of June, A. D. 1853.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

Said bond was filed in my office, June 16, 1853.

R. W. EDMONDSON, *Clerk.*

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, Robert W. Edmondson, clerk of the district court of the United States, for the northern district of Mississippi, do hereby certify that the foregoing twenty-nine pages contain a full, true and perfect transcript

of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remains of record and on file in my office, and also of the appeal bond executed by complainant, with the judge's certificate of approval and the date of filing in my office.

In testimony whereof I hereunto set my hand and affixed the seal of said court, at office in Pontotoc, this 21st day of June, A. D. 1853.

[SEAL.]

R. W. EDMONDSON, *Clerk*.